SEP 12 19

IN THE

Supreme Court of the United States

October Term, 1949

No. 168

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA and JOHN L. LEWIS, as President, International Union, United Mine Workers of America,

Petitioners

v.

THE UNITED STATES OF AMERICA

No. 169

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund,

Petitioners

v.

THE UNITED STATES OF AMERICA

On Petition for Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR CERTIORARI

ARTHUR J. GOLDBERG
General Counsel
THOMAS E. HARRIS
Assistant General Counsel

INDEX

Interest of the Congress of Industrial Organizations 1

Questions Presented 1

Statement 2

Reasons for Granting the Writ 3

Conclusion 8

TABLE OF CASES CITED

Dorchy v. *Kansas*, 264 U. S. 286, 290 6

Douds v. *Retail Stores Union*, 170 F. (2d) 695 (C.C.A. 2, 1948) 5

Federal Radio Commission v. *General Electric Company*, 281 U S. 464 ..... 4, 6

Gordon v. *United States*, 117 U. S. 697 4

Hayburn's case, 2 Dall. 409, 13 How. 52 4

Interstate Commerce Commission v. *Brimson*, 154 U. S. 447 4

Keller v. *Potomac Electric Power Company*, 261 U. S. 428 5

Postum Cereal Company v. *California Fig Nut Company*, 272 U. S. 693 5

Railroad Retirement Board v. *Alton R. Co.*, 295 U. S. 330 6

In re Sanborn, 148 U. S. 222 4

Scripps-Howard Radio v. *Federal Communications Commission*, 316 U. S. 4 7

United States v. *Ferreira*, 13 How. 40 4

United States v. *United Mine Workers*, 330 U. S. 258 3

IN THE

Supreme Court of the United States

October Term, 1949

No. 168

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA and JOHN L. LEWIS, as President, International Union, United Mine Workers of America,

Petitioners

v.

THE UNITED STATES OF AMERICA

No. 169

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, and JOHN L. LEWIS, as President, International Union, United Mine Workers of America, and as Union Representative Trustee, Board of Trustees, United Mine Workers of America Welfare and Retirement Fund,

Petitioners

v.

THE UNITED STATES OF AMERICA

On Petition for Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR CERTIORARI

INTEREST OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

In these cases the Court of Appeals has decided questions of great importance to all labor organizations in a way adverse to the interests of those organizations. It is for that reason that the Congress of Industrial Organizations joins the United Mine Workers of America in asking this Court to review the decision.

QUESTIONS PRESENTED

We agree with petitioners that the entire case, encompassing the numerous questions set forth in the petition, merits review

by this Court. However, the following relatively narrow issues seem to us especially to warrant review:

1. Whether petitioners, United Mine Workers and John L. Lewis, were required, on pain of contempt, to comply with the temporary restraining order of the District Court directing them to cause the miners to return to work, without regard to the correctness of petitioners' contentions (1) that the order of the District Court amounted to naked usurpation of power, because petitioners had not caused the work stoppage; and (2) that the District Court had no jurisdiction over the subject matter of the action because the statute purporting to confer jurisdiction violates Article III of the Constitution.

2. Whether the Court of Appeals properly dismissed the appeal from the orders granting a temporary restraining order and a preliminary injunction, on the ground that their dissolution rendered the appeal moot, when injunctions of this type issued under the Taft-Hartley Act must always be dissolved after 80 days, so that under the holding below their legality could never come before an appellate court.

STATEMENT

The statement of the case in the Government's brief in opposition omits the following two cardinal points:

1. The temporary restraining order of the District Court directed the Union and its officers to "forthwith instruct" its members to return to work, despite the Union's contention that it had not caused the strike. In upholding this order, the Court of Appeals did not find that the Union was responsible for the strike. It held that the District Court could order the Union to break the strike whether or not the Union caused it.

Thus, after stating that the Union contended that neither it nor its President caused the strike, the Court declared (R. 552):

> Appellants were not convicted for causing the walk-out. They were convicted because they deliberately failed to comply with the court's order of April 3rd. * * * The Union and Lewis ignored the order until the basic dispute was settled. The evidence supports their claim that they endeavored to settle the basic dispute, but it also shows

conclusively that pending the settlement of that dispute they made no attempt to restore normal production.

Again (R. 553):

> Appellants urge that the Union cannot be held liable for the acts of the miners in stopping work. * * * But, * * * we repeat that the Union was not convicted for causing the walk-out. It was convicted because it did not exercise, or attempt to exercise, whatever powers it had to cause its members to resume work temporarily pursuant to the court's order. Quite apart from what the miners did, the Union made no attempt to direct, instruct or persuade them to return to work, and thereby it disobeyed the court's order.

2. Petitioners contend, and contended below, that the District Court was without jurisdiction over the subject matter, for the reason that Title II of the Taft-Hartley Act, under which the Court acted, confers non-judicial powers on federal district courts, in violation of Article III of the Constitution. The Court of Appeals did not refer to this argument, nor does the Government in its Brief in Opposition.

Both of these points are highly pertinent to petitioners' contentions that the restraining order amounted to naked usurpation, was void and a nullity, and might therefore be disregarded with impunity.

REASONS FOR GRANTING THE WRIT

I.

The Court of Appeals held that every question necessary to the decision of this case had been disposed of by this Court in *United States* v. *United Mine Workers*, 330 U. S. 258. We submit, however, that the Court of Appeals has misconstrued the opinion of this Court in the *Mine Workers* case. In that case this Court held that an order entered by a court which has jurisdiction over the subject matter and which does not amount to usurpation of authority must be obeyed until set aside, on pain of contempt. But that case did not involve whether a union must comply with an order directing it to stop a strike it did not cause, nor the status of an order asserted to be void because in violation of Article III of the

Constitution. These are important issues which are presented in this case and which merit review by this Court.

1. Petitioners contended and the Court of Appeals conceded, at least for purposes of decision, that petitioners did not cause the strike. The Court of Appeals held, nevertheless, that the Union must comply with the order to stop the strike.

In the *Mine Workers* case this Court recognized that an order amounting to usurpation of authority may be ignored. To hold otherwise would mean that courts could arrogate authority to themselves as they pleased, and would have to be obeyed until reversed by a higher court. Application of such a doctrine to labor disputes would be disastrous to unions. To stop a strike temporarily is to break it forever. And, under the holding below, any union could be ordered to stop a strike, even if it did not call it.

No provision of the Taft-Hartley Act, no principle of equity jurisprudence, even so much as lends color to the District Court's arrogation of such power. Petitioners' claim that the order was a nullity presents a substantial and important question which has not been but should be decided by this Court.

2. Petitioners contended below that the functions conferred upon the courts by the so-called national emergency strike provisions of the Taft-Hartley Act are non-judicial in nature, and that those provisions, therefore, violate Article III of the Constitution. It has been settled almost since the inception of this government that there are at least two limitations upon the duties and powers which can be conferred upon federal courts created under Article III. In the first place, the function must be judicial in nature, not executive or legislative. In the second place, even judicial functions can be exercised by the federal courts only in connection with "cases or controversies" which are entrusted to the judiciary for final adjudication. See *Hayburn's case*, 2 Dall. 409, 13 How. 52; *United States* v. *Ferreira*, 13 How. 40; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447; *Gordon* v. *United States*, 117 U. S. 697; *In re Sanborn*, 148 U. S. 222; *Federal Radio Commission* v. *General Electric Company*, 281 U. S.

464; *Postum Cereal Company* v. *California Fig Nut Company*, 272 U. S. 693; and *Keller* v. *Potomac Electric Power Company*, 261 U. S. 428.

Petitioners contend that both of these restrictions upon the powers which may be conferred upon federal courts created under Article III are violated by Sections 206-210 of the Taft-Hartley Act. Under these provisions, the only function of the federal courts is to issue 80-day injunctions against so-called national emergency strikes. The particular strike enjoined may, up until that point, have been legal, or it may have been illegal. That, however, is not a question which comes before the court, or upon which the issuance of an injunction depends. No legal issue—no justiciable controversy—of any sort is involved in a proceeding under Sections 206-210. The only function conferred upon a court by those sections is to issue an injunction, and then to dissolve it after eighty days, whether or not the strike has been settled.

The court is thus directed by the Act to issue an injunction which has no relation to any case or controversy which is or will be before it or any other court. The injunction is not in aid of any jurisdiction which may ultimately be exercised by any court.[1] It is not in aid of the jurisdiction of any admin-

---

[1] That is the distinction between this case and *Douds* v. *Retail Stores Union*, 170 F. (2d) 695 (C.C.A. 2, 1948), which upheld the constitutionality of Section 10(1) of the Taft-Hartley Act. That section provides that whenever it is charged that any person has engaged in an unfair labor practice of a certain type, the Labor Board shall after preliminary investigation petition any district court for appropriate injunctive relief "pending the final adjudication of the Board with respect to such matter." Whether or not such an injunction is issued, the unfair labor practice case is thereafter handled like any other unfair labor practice case by the Labor Board, and the Board's decision is reviewable, as in other cases, by the appropriate court of appeals.

The difference between Section 10(1) and the statutory provisions here involved is at once apparent. Section 10(1) deals with cases or controversies which are potentially within the adjudicatory powers of the courts, and all that that section does is to direct the district courts to grant interim relief. That the cases will ultimately go before some other court for final disposition does not, of course, affect the existence of a case or controversy or deprive it of its justiciable nature. Neither does the fact that it will come before an administrative body for preliminary determination between the issuance of the injunction by the

istrative body. It is *sui generis*—a temporary decree by which the court, instead of the Congress, makes a strike illegal, not permanently but for 80 days. That is not a judicial power, and it cannot constitutionally be conferred upon courts created under Article III.[8]

If the contentions set out in the preceding paragraphs be well founded, the District Court was entirely without jurisdiction over the subject matter of this case, and its order was void. Petitioners could ignore it with impunity. Therefore it was incumbent upon the Court of Appeals to consider these contentions upon their merits. Its refusal to do so was evidently based upon a misconstruction of this Court's decision in the *Mine Workers* case, which should be corrected by this Court.

II.

The refusal of the court below to review the legality of the temporary restraining order and of the preliminary injunction

---

district court and review of the Board's decision by the court of appeals. The judicial process utilized under Section 10(1) is not merely in aid of an administrative body—the Labor Board—but is in aid of the jurisdiction ultimately to be exercised by the courts of appeals. As such it is well within traditional concepts of the judicial power.

[8] As this Court stated in *Federal Radio Commission* v. *General Electric Company*, 281 U. S. 464, 468, "the courts of the District of Columbia are not created under the judiciary article of the Constitution but are legislative courts, and therefore * * * Congress may invest them with" non-judicial functions. Therefore (other constitutional questions aside), Congress no doubt could have constitutionally bestowed upon the courts of the District of Columbia the authority conferred by Sections 206-210, even though such power could not constitutionally be given to the other federal courts.

That, however, cannot save the constitutionality of the provisions in question, since it is too plain for argument that Congress would not have enacted the statute thus limited. It is familiar law that, when one part of a statute is held unconstitutional, whether the remainder of the Act will be left to stand alone, or will be held to fall entirely, depends on whether it appears that Congress would have enacted the remaining parts of the Act with the unconstitutional portion omitted. *Dorchy* v. *Kansas*, 264 U. S. 286, 290; *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 362.

Here Congress sought to confer jurisdiction upon "any district court of the United States having jurisdiction of the parties" (Sec. 208(a)) and it provided for review by "the appropriate circuit court of appeals and by the Supreme Court" (Sec. 208(c)). It cannot reasonably be supposed that if Congress had anticipated that these powers could be upheld only as to one district court out of perhaps a hundred, and as to one court of appeals out of ten, with the provision for Supreme Court review falling entirely, it would have enacted the provisions at all.

presents an important question which should be decided by this Court.

The temporary restraining order issued by the District Court expired by its own terms, and the preliminary injunction which succeeded it was discharged by the District Court upon application of the Government. Accordingly, the court below dismissed the appeal in that case (No. 169 in this Court) as moot.

Under this holding, it would never be possible to secure the decision of this Court, or even of the Court of Appeals, upon the constitutionality of Title II of the Taft-Hartley Act, or upon the legality of an injunction issued under it. Section 210 of that Act provides that upon the completion of certain procedures under Section 209 of the Act, which may take a maximum of 80 days, the Attorney General "shall move the court to discharge the injunction, which motion shall be granted and the injunction discharged." Thus, these 80-day injunctions will always be discharged before enough time elapses to permit review by this Court of their legality or of the constitutionality of the underlying statute.

The holding below would render inoperative the provision of Section 208(c) of the Taft-Hartley Act that "The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari * * *." In a situation such as the present it is necessary and proper, moreover, that technical considerations be disregarded, in order to afford judicial protection to vital constitutional rights.

This Court has evidently taken that view even in cases not involving constitutional issues, where the case could not reach this Court in time to avoid its having become technically moot. Thus, in *Scripps-Howard Radio* v. *Federal Communications Commission,* 316 U. S. 4, the question decided by this Court was whether the Court of Appeals had power to stay enforcement of an order of the Federal Communications Commission pending appeal. The Court of Appeals had not issued a stay, the order of the Commission had gone into effect, and during the 2½ years it took the case to reach this Court the question of a stay had, for that case, become wholly academic. This was pointed out by the Government in its brief, with the sug-

gestion that the case was moot. However, the opinion of the Court, by Mr. Justice Frankfurter, ignored entirely the question of mootness, undoubtedly because the question in that case could, from its very nature, never reach this Court without having become technically moot.

The same considerations apply here. The question of the legality of an injunction could never be brought before this Court within 80 days. Nothing in the Taft-Hartley Act, however, prevents the Attorney General from securing one 80-day injunction after another. That underlines what should be evident enough anyway, that a court should not permit technical consideration of mootness to frustrate protection of legal and constitutional rights.

CONCLUSION

For these reasons, it is respectfully submitted that the petition for writs of certiorari should be granted.

ARTHUR J. GOLDBERG
General Counsel
THOMAS E. HARRIS
Assistant General Counsel